

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
)	
v.)	Docket no. 00-CR-37-B-S
)	
ROBERT NASON, JR.,)	
)	
Defendant)	
)	

ORDER ON DEFENDANT’S MOTION TO DISMISS

Singal, District Judge

Pending before the Court are the following motions: Defendant’s Motion to Dismiss Indictment and Motion to Withdraw Guilty Plea (Docket #12). Additionally, the Government has filed a Motion to Certify Question of State Law to the Supreme Judicial Court of Maine (Docket #9) and a Motion for Rule 104(a) Preliminary Determination of Admissibility (Docket #14). Stripped to their essence, all of these motions question whether Defendant’s previous misdemeanor assault conviction falls within the definition of “misdemeanor crime of domestic violence” found in 18 U.S.C. § 921(a)(33). For the reasons discussed below, the Court finds that Defendant’s previous assault conviction qualifies as a “misdemeanor crime of violence.” Therefore, the Court DENIES both Defendant’s Motion to Dismiss and Defendant’s Motion to Withdraw Guilty Plea.

I. FACTUAL BACKGROUND

On June 19, 2000, Defendant Robert Nason was indicted on one count of being a domestic violence misdemeanor in possession of a firearm in violation of 18 U.S.C. § 922(g)(9) (“Count I”) and one count of making a false statement in connection with the purchase of a firearm in violation of 18 U.S.C. § 922(a)(6) (“Count II”). The previous misdemeanor conviction that serves as the basis for the present charges is described in the instant indictment as: “Assault, Somerset County Superior Court (Docket No. CR 980362), 12/14/98.” (Indictment (Docket #1).)

The available court record from this underlying assault conviction consists of various documents. First, there is a summons received by Defendant that charges him with a violation of 17-A M.R.S.A. § 207 and describes the charged violation as “assault domestic.” (See Court Ex. 1.) There is also a criminal complaint charging that on July 6, 1998, Robert Nason “did intentionally, knowingly or recklessly cause bodily injury or offensive physical contact to one Beth Nason.” (Id.) The state court docket report shows that Nason pled guilty to this complaint on December 14, 1998, and was sentenced to 72 hours imprisonment and ordered to pay a \$10 special assessment fee.¹

In addition to the court records of the underlying conviction, the Government has submitted copies of the police report that served as the basis for the criminal complaint. Included in the police report are signed statements the police collected from: Robert Nason, the Defendant; Beth Nason, the victim of the assault; and Barbara Richards, a friend of Beth Nason who witnessed the assault. In his signed statement Robert Nason described the events as follows: “I Robert Nason came home from work. House was a

¹ At oral argument, Mr. Nason admitted that he waived his right to be represented by counsel on these 1998 assault charges.

mess. She was a bich. [sic] She started throwing a fit. I told her to get out. She then started throwing food out of the refrigerator on to the deck. I grab her and through [sic] her out.” (Id.)

II. PROCEDURAL BACKGROUND

On August 23, 2000, Defendant pled guilty to Count I of the pending federal indictment. Pursuant to a plea agreement (Docket #8), the Government agreed to dismiss Count II in exchange for Defendant’s plea of guilty to possession of a firearm after conviction for a misdemeanor crime of domestic violence. On December 13, 2000, the Court held a presentence conference at which the Government advised that it was filing a motion to certify a question of state law. Therefore, the Court, pursuant to Defendant’s motion, continued the case.

Since that time, both Defendant and the Government have filed a variety of motions all seeking resolution of the same question; namely, when does a misdemeanor assault conviction under 17-A M.R.S.A. § 207 qualify as a “misdemeanor crime of domestic violence” for purposes of a violation of section 922(g)(9)? The Court notes that Mr. Nason is one of many defendants before this Court raising this question.² The question came to light after two decisions by another court within this District.

First, Chief Judge Hornby issued a decision on a pending sentencing guideline issue in United States v. Weeks, No. CRIM. 00-4-B-H, 2000 WL 1879808 (D. Me. Sept. 28, 2000). In Weeks, the defendant questioned whether his previous plea of “nolo” to a

² The Clerk has advised the Court of at least four other cases raising this question. (See United States v. Gordon, No. 00-CR-41-B-S; United States v. Parks, No. 00-CR-42-B-S; United States v. Brackett, No. 00-CR-49-B-S; United States v. Swain, No. 00-CR-52-B-S.)

Maine assault charge qualified as a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a)(33). Depending on Chief Judge Hornby's resolution of this question, the defendant may or may not have been considered a "prohibited person" under United States Sentencing Guideline § 2K2.1(a)(4). The court applied a categorical approach pursuant to the Supreme Court's decision in Taylor v. United States, 495 U.S. 575, 600-06 (1990). By looking at the police reports and victim statements, Chief Judge Hornby concluded that the assault did not involve bodily injury and that the defendant, therefore, pled "nolo" to an offensive physical contact assault.³ He ultimately concluded "that whatever the actual circumstances of the underlying assault, [Mr. Weeks] pleaded nolo to and was convicted of only offensive physical contact, and that such a crime is not a crime that categorically involves physical force." Id. at *2.

Second, on January 3, 2001, Chief Judge Hornby applied his reasoning in Weeks to decide a motion to dismiss in the case of United States v. Southers, No. 00-83-P-H, 2001 WL 9863 (D. Me. Jan. 3, 2001). In Southers, the defendant was charged with being a domestic violence misdemeanor in possession of a firearm in violation of 18 U.S.C. § 922(g)(9). The underlying misdemeanor that served as the basis for the federal charge was a 1992 "nolo" plea to the charge that he had "intentionally, knowingly or recklessly caused bodily injury or offensive physical contact to Tammy Gardner" in violation of 17-A M.R.S.A. § 207.

Essentially, Southers required Chief Judge Hornby to similarly reconcile Maine's assault statute, 17-A M.R.S.A. § 207, with the federal definition of "misdemeanor crime of domestic violence" found in 18 U.S.C. § 921(a)(33)(A). However, the question was

³ As discussed more fully below, a person may be convicted of misdemeanor assault under the Maine statute for causing either bodily injury or offensive physical contact. See 17-A M.R.S.A. § 207.

raised in reference to the sufficiency of an indictment rather than a sentencing guideline calculation. See id. Standing by his previous conclusion that an assault conviction based on offensive physical contact does not have physical force as an element, Chief Judge Hornby dismissed the indictment although the underlying facts found in the criminal complaint alleged what amounted to physical force. See id. at *1 (explaining that the underlying criminal complaint alleged that Southers committed assault by “pushing [the victim], throwing her to the floor and ripping her clothes.”).

At oral argument, both the Government and Defense counsel acknowledged that Chief Judge Hornby’s decisions in Weeks and Southers are not binding on the Court’s determination of the pending motions. However, counsel on both sides correctly raised concerns that all defendants charged with violations of section 922(g)(9) be treated fairly and uniformly within the District.

III. STANDARD OF REVIEW FOR A MOTION TO DISMISS

“In the normal course of events, a facially valid indictment returned by a duly constituted grand jury calls for a trial on the merits.” United States v. Stokes, 124 F.3d 39, 44 (1st Cir. 1997) (citing Costello v. United States, 350 U.S. 359, 363 (1956); United States v. Rodriguez, 738 F.2d 13, 16 (1st Cir. 1984)). However, Rule 12(b) of the Federal Rules of Criminal Procedure also states that “[a]ny defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion.” Fed. R. Crim P. 12(b).

In this case, Defendant’s Motion raises both questions of law and questions of fact. Essentially, the Court first must determine, as a matter of law, whether a conviction

under 17-A M.R.S.A. § 207 categorically involves the use or attempted use of physical force. If not, then the Court must determine, as a matter of law, what evidence, if any, a court may look to in determining whether a defendant's conviction under 17-A M.R.S.A. § 207 involved the use or attempted use of physical force. The answer to this legal question, in turn, raises a factual question; namely, whether the Government's evidence is sufficient for a jury to conclude that the defendant has a previous conviction for a misdemeanor crime of domestic violence?

Obviously, this latter factual question can only be resolved by a jury trial. See, e.g., United States v. DeLaurentis, 230 F.3d 659, 660 (3rd Cir. 2000) (“[A] pretrial motion to dismiss an indictment is not a permissible vehicle for addressing the sufficiency of the government's evidence.”) However, the Court must frame the jury's inquiry and decide what evidence the Government may present to support its charge. Additionally, the Court understands that it is in the interest of both the Government and Defendant to resolve the legal questions at this pretrial stage. See, e.g., United States v. Alfonso, 143 F.3d 772, 777 n.7 (2nd Cir. 1998) (explaining how the Government's interest may be better served by a pretrial determination); U.S.S.G. § 3E1.1 (laying out the adjustment for acceptance of responsibility commonly received by defendants who enter a plea of guilty).

IV. DISCUSSION

Having set the stage, the Court must now embark on its own application of the relevant precedents to the case at hand. The case law that all parties agree is at issue grows from the Supreme Court's decision in United States v. Taylor, 495 U.S. 575

(1990), in which the Court adopted a categorical approach to determine whether previous convictions constituted violent felonies for purposes of sentencing enhancement under 18 U.S.C. § 924(e).

Following Taylor's mandate, the First Circuit repeatedly has applied a categorical approach to determine what qualifies as a violent felony under section 924(e). See, e.g., United States v. Shepard, 231 F.3d 56, 62-67 (1st Cir. 2000); United States v. Harris, 964 F.2d 1234, 1235-36 (1st Cir. 1992); United States v. Doe, 960 F.2d 221, 223-24 (1st Cir. 1992). The First Circuit also has applied Taylor's categorical approach to determine whether previous convictions are crimes of violence making the defendant eligible for sentencing as a "career offender" under U.S.S.G. § 4B1.1. See, e.g., United States v. Dueno, 171 F.3d 3, 5-7 (1st Cir. 1999); United States v. Damon, 127 F.3d 139, 141-46 (1st Cir. 1997); United States v. Fernandez, 121 F.3d 777, 779-80 (1st Cir. 1997); United States v. Meader, 118 F.3d 876, 882-85 (1st Cir. 1997); United States v. Winter, 22 F.3d 15, 18-21 (1st Cir. 1994).

In United States v. Meade, 175 F.3d 215 (1st Cir. 1999), the defendant suggested that pursuant to the categorical approach, only crimes that included proof of relationship status as an element of the offense could be considered misdemeanor crimes of domestic violence. The Court in Meade found the defendant's argument unpersuasive and concluded that "only the mode of aggression, not the relationship status between perpetrator and victim, must appear within the formal definition of an antecedent misdemeanor." Id. at 219. The First Circuit left open the possibility that Taylor's categorical approach could be applied to determine whether a previous misdemeanor conviction qualified as a misdemeanor crime of domestic violence under section

922(g)(9). See id. at 221. However, it explained that “[b]efore engaging in a categorical approach, one first must have established the formal definition of the particular predicate offense, a process that requires determining the requisite elements of the statute of conviction.” Id. Pursuant to this instruction, the Court turns to “the definitional question.” Shepard, 231 F.3d at 64.

A. The Definitional Question

According to First Circuit precedent, “the definitional question” looks only to the relevant state and federal statutes without reference to the specific facts of a given case. See id. Below the Court briefly describes the statutes at issue.

1. Maine’s Assault Statute

Under Maine statute, a person is guilty of misdemeanor assault “if he intentionally, knowingly, or recklessly causes bodily injury or offensive physical contact to another.” 17-A M.R.S.A. § 207(1). “Bodily injury” is a self-explanatory phrase. However, regardless of whether a victim sustains bodily injury, a person may also be guilty of assault for “intentionally, knowingly or recklessly” causing an “offensive physical contact.” Id.

The Maine Law Court has adopted the Restatement definition of offensive physical contact. See State v. Rembert, 658 A.2d 656, 658 (Me. 1995). Thus, the Law Court has held that offensive physical contact includes

Unpermitted and intentional contacts with anything so connected with the body as to be customarily regarded as part of the other’s person and therefore as partaking of its inviolability is actionable as offensive contact with his person. There are some things, such as clothing or a cane or, indeed, anything directly grasped by the hand which are so intimately connected with one’s body as to be universally regarded as part of the person.

Id. (quoting Restatement (Second) of Torts § 18 cmt. c (1965)).⁴ Similarly, the Maine Law Court has endorsed the Restatement’s view regarding what makes a physical contact “offensive” by upholding jury instructions that defined offensive physical contacts as:

knowingly intending bodily contact or unlawful touching done in such a manner as would reasonably be expected to violate the person or dignity of the victim.

It is something less than bodily injury . . . but requires more than a mere touching of another. And basically it’s a question of was the contact under the circumstances such that a reasonable person would find it offensive.

You may consider what a reasonable person might consider under the circumstances to be offensive as well as the subjective interpretation of the contact as a particular victim might testify to during the course of trial.

State v. Pozzuoli, 693 A.2d 745, 747 (Me. 1997). This instruction is in accordance with the Restatement’s definition of what constitutes offensive contact. See Restatement (Second) of Torts § 19 (1965) (“A bodily contact is offensive if it offends a reasonable sense of personal dignity.”).

2. 18 U.S.C. § 922(g)(9)

Section 922(g)(9) makes it a federal crime for someone to possess a firearm if he or she “has been convicted in any court of a misdemeanor crime of domestic violence.” 18 U.S.C. § 922(g)(9). Under the statute, a “misdemeanor crime of domestic violence” is defined, in relevant part, as

an offense that—

- (i) is a misdemeanor under Federal or State law;
- (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has

⁴ After quoting this portion of the Restatement, the Maine Law Court in Rembert went on to conclude that assault was a lesser included offense of robbery because “the use of ‘physical force on another’ [an element of robbery] necessarily involves some type of ‘offensive physical contact to another’ [an element of assault].” Id.

cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse parent or guardian of the victim.

18 U.S.C. § 921(a)(33)(A). In accordance with the First Circuit’s holding that only the mode of aggression needs to appear within the statutory definition of the previous misdemeanor, the Court must examine the statute to determine whether it has, as an element, “the use or attempted use of physical force.” See Meade, 175 F. 3d at 219, 221.

The statute does not provide any additional guidance on the meaning of the term “physical force.” However, the Court notes the absence of any limiting or descriptive language, such as *more than minimal* physical force or *excessive* physical force.⁵ See, e.g., 18 U.S.C. § 922(g)(8)(C)(ii) (“the use, attempted use of physical force ... *that would reasonably be expected to cause bodily injury*”) (emphasis added).

⁵ While the available legislative history on this provision is sparse, the Court notes that statements by Senator Lautenberg, the provision’s primary sponsor, support a broad reading of the “physical force” language. See Meade, 175 F.3d at 219 (similarly citing to statements by Sen. Lautenberg while interpreting the language of section 922(g)(9) and explaining the relative weight of such statements). In explaining the choice of language in the final bill, Senator Lautenberg explained:

[T]he final agreement does include some minor changes to the Senate-passed version that actually strengthen the ban slightly. Let me review some of them now.

First, the revised language includes a new definition of the crimes for which the gun ban will be imposed. Under the original version, these were defined as crimes of violence against certain individuals, essentially family members. Some argued that the term crime of violence was too broad, and could be interpreted to include an act such as cutting up a credit card with a pair of scissors. Although this concern seemed far-fetched to me, I did agree to a new definition of covered crimes that is more precise, and probably broader.

Under the final agreement, the ban applies to crimes that have, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon. This is an improvement over the earlier version, which did not explicitly include within the ban crimes involving an attempt to use force, or the threatened use of a weapon, if such an attempt or threat did not also involve actual physical violence.

142 Cong. Rec. S11872-01, S11877 (Sept. 30, 1996).

3. Reconciling the State and Federal Statutes

Having examined the language of each statute, the Court must attempt to reconcile the different statutory language. This determination is complicated by the fact that the state statute focuses on the victim's perspective asking whether the action resulted in bodily injury or offensive physical contact. Comparatively, the federal statute focuses on the offender's perspective asking whether physical force was used. Put another way, the federal statute focuses solely on the cause, while the state statute focuses on the effect.

Apparently, no one disputes that an assault conviction based on bodily injury to the victim involves "the use or attempted use of physical force" by the assailant. See Weeks, 2000 WL 1879808, at *1 ("The defendant concedes that 'bodily injury' connotes 'physical force.'"). However, there is a disagreement regarding whether an offensive physical contact categorically involves the use or attempted use of physical force. Therefore, the Court limits its discussion to assault convictions based upon offensive physical contact.

Having found no definition of "physical force" in either the statute or relevant case law, the Court adopts the generic definition found in Black's Law Dictionary, which defines physical force as "force applied to the body."⁶ Black's Law Dictionary 1147 (6th ed. 1990). Under this definition, the Court concludes that physical force encompasses offensive physical contact because such contact occurs as a result of some force applied

⁶ Black's Law Dictionary also defines physical force as "actual violence." However, looking to Black's definition of actual violence, one finds the following: "[a]n assault with actual violence is an assault with physical force put into action, exerted upon the person assailed. The term violence is synonymous with physical force and the two are used interchangeably in relation to assaults." Black's Law Dictionary 35-36 (6th ed. 1990). Therefore, to avoid circular reasoning, the Court does not include "actual violence" in its working definition.

to the body. See United States v. Smith, 171 F.3d 617, 621 n.2 (8th Cir. 1999) (“[P]hysical contact [that is merely insulting or offensive], by necessity, requires physical force to complete.”).

By way of example, grabbing a person’s arm, spitting on a person or throwing an object at a person are all examples of actions that might be found to result in offensive physical contacts. All of these actions require physical force by the actor. Additionally, to the extent Maine’s statute allows touching of a person’s clothes, cane or wheelchair to qualify as an offensive physical contact, such actions still involve an application of force to the body. This conclusion is warranted because, by definition, such objects must be “so intimately connected with one’s body as to be universally regarded as part of the person” in order to qualify as an offensive physical contact.⁷

The Court concludes that, as a matter of law, “bodily injury” and “offensive physical contact” involve “the use or attempted use of physical force.” Thus, any conviction under Maine’s assault statute “has, as an element, the use or attempted use of physical force” and qualifies as a “misdemeanor crime of domestic violence” pursuant to section 921(a)(33)(A) if the victim has the requisite domestic relationship with the assailant. Therefore, in order to prove that a defendant charged with violating section 922(g)(9) “has been convicted in any court of a misdemeanor crime of domestic

⁷ Additionally, the Court notes that “an offensive physical contact” by definition requires that a reasonable person would be offended by the contact under the circumstances. See Pozzuoli, 693 A.2d at 747-48. Thus, although Maine has only a general assault statute that is utilized in both domestic and non-domestic assaults, by adopting “a reasonable person under the circumstances” standard, Maine’s assault statute implicitly adopts a nuanced standard for domestic assault cases involving offensive physical contacts. Specifically, the offensive contacts in domestic assault cases are those that a reasonable spouse or significant other would find offensive despite the intimate relationship with the assailant. By way of example, while a reasonable person might think it was offensive for a complete stranger to touch his or her arm, the same reasonable person would not think it was offensive for his or her spouse to touch the same arm in the same manner.

violence,” the Government need only introduce evidence of a prior conviction under 17-A M.R.S.A. § 207 along with evidence of a domestic relationship. 18 U.S.C. § 922(g)(9).

This conclusion normally would end the Court’s inquiry without resort to the nuances of the categorical approach. However, the Court must acknowledge that its broad definition of physical force is directly at odds with the conclusion reached by another court of this same district. See Weeks, 2000 WL 1879808, at *1; Southers, 2001 WL 9863, at *1. Bearing in mind that the First Circuit will have to resolve this issue, the Court below discusses an alternative grounds for its ruling.

B. A Categorical Approach

Under a narrower definition of physical force, it is possible that an offensive physical contact could occur without physical force. Even if physical force is narrowly defined, however, the Court alternatively finds that the use or attempted use of physical force remains “a normal, usual, or customary concomitant” of an offensive physical contact assault under the Maine statute. Winter, 22 F.3d at 20 (“[A] categorical approach is concerned with the usual type of conduct that the statute purposes to proscribe.”); see also Damon, 127 F.3d at 143 (applying this same standard in examining whether a prior conviction for aggravated criminal mischief qualifies as a crime of violence under the Sentencing Guidelines).⁸ In other words, the proven cause of an offensive physical

⁸ The Court notes that previous First Circuit decisions applying this “typical run of conduct” standard have concluded that the convictions at issue did not qualify for sentencing enhancement because the “typical run of conduct” proscribed by the state statute did not fall under the relevant federal statute or sentencing guideline. See, e.g., Damon, 127 F.3d at 145. Therefore, the First Circuit has not explicitly discussed or endorsed the obverse proposition applicable to this case. Specifically, if the typical conduct proscribed by a state statute falls within the relevant federal statute, do all convictions under that state statute fall within

contact assault in most, if not all, cases is physical force by the assailant. This alternative conclusion raises the question of whether the Government may prosecute persons for violating section 922(g)(9) if the underlying domestic violence misdemeanor is a Maine assault conviction, which may or may not have involved physical force. See Meade, 175 F.3d at 221 (discussing the analogous questions faced by the Supreme Court in Taylor).

1. The Qualified Categorical Approach: Looking Beyond the Language of the Statute⁹

When a state assault conviction is based on “offensive physical contact,” and, therefore, may or may not have involved physical force, the court is permitted to look beyond the language of the statute to determine whether the assault conviction involved proof of physical force. In the Taylor case, the Supreme Court explained that a court faced with an ambiguous state conviction might look to the indictment or the jury instructions to determine whether the previous conviction qualified as a violent felony for sentencing purposes. See Taylor, 495 U.S. at 602. This approach assumed that the conviction at issue would be the result of a jury trial without explicitly discussing what documents a court might look to in the case of a previous conviction resulting from a defendant pleading guilty and waiving his right to a jury trial.

the relevant federal statute or is the court simply allowed to inquire further to determine whether the specific conviction involved the typical conduct? The Court assumes the latter in continuing its analysis.

⁹ Although the Court applies Taylor’s categorical approach in the following section, the Court pauses to note the First Circuit’s stated reasons for its adoption of the categorical approach. See Damon, 127 F.3d at 145-46. Those reasons include: (1) that a categorical approach mirrors the approach of the Sentencing Guidelines, (2) the administrative interest in avoiding mini trials, (3) honoring the prosecutorial discretion of the states, and (4) that a categorical approach is “more or less evenhanded in its imperfections.” Id. The Court is not entirely certain that this reasoning carries over to the examination of predicate offenses when such offenses are essential elements of a charged federal offense. Thus, although the Court applies the categorical approach to this case as precedent suggests it should, it remains skeptical that the application of the categorical approach serves the same useful purposes it serves at the sentencing stage.

However, the First Circuit has addressed the dilemma of an ambiguous previous conviction based upon a plea. See Shepard, 231 F.3d at 65-66 (discussing the issue in the context of determining whether a state conviction qualified as violent felonies for purposes of a sentencing enhancement). Under these circumstances, when the applicable state statute casts a wider net than allowed under the applicable federal statute, the Court may rely on other reliable evidence, including police reports of the underlying offense. See id. at 67. In examining such evidence, the Court must determine whether both the government and the defendant believe that the defendant's guilty plea constituted an admission to a crime involving the use or attempted use of physical force. See id. at 66.

In Shepard, the First Circuit addressed this question in the context of a sentencing enhancement where the judge acts as the fact finder and applies a preponderance of the evidence standard. In this case, the Court faces the same question regarding the sufficiency of the indictment. Specifically, Defendant contends that the indictment fails to adequately charge an essential element of the offense, namely, a previous conviction for a misdemeanor crime of violence. Defendant undoubtedly is entitled to have a jury consider whether the Government can prove each element of a charged offense beyond a reasonable doubt. However, this high standard of proof applies at trial and not at the motion to dismiss stage of the proceedings. Therefore, in resolving the pending motions, the Court asks whether, by relying on the Government's proffered evidence, a reasonable jury could find beyond a reasonable doubt that Defendant's alleged previous conviction was a misdemeanor crime of domestic violence.

2. Preliminary Determination of the Factual Question

Under Shepard, the factfinder's inquiry must focus on the events of December 14, 1998, the day Mr. Nason pled guilty. The factfinder need not and should not attempt to recreate the events of July 6, 1998, the day of the assault in question. Mindful of this focused inquiry, the Court finds that the Government could introduce the court documents and police report (Court Ex. 1) as evidence that Defendant pled guilty to a misdemeanor crime of domestic violence.¹⁰

Examining the police report, which served as the basis for the criminal complaint, the Court focuses on the signed statement of Mr. Nason. In this statement, Mr. Nason admitted to grabbing his wife and throwing her out of the house.¹¹ A reasonable jury could find that both Mr. Nason and the District Attorney believed that Mr. Nason's guilty plea on December 14, 1998, incorporated this previous statement and thereby constituted an admission to a crime involving the use or attempted use of physical force.

Additionally, the Court notes that nothing in the remainder of the police report or the other attached signed statements suggests that Mr. Nason caused an offensive physical touching without the use of physical force. Since Defendant did not question the accuracy of the police report or his signed statement at oral argument and there is no suggestion that he questioned the police report at his state hearings, the Court concludes that it is unlikely that a jury could find that physical contacts other than those described in the report served as the mutually understood basis for Mr. Nason's guilty plea.

¹⁰ These documents, of course, would be subject to redaction pursuant to F.R.E. 403 & 404.

¹¹ At oral argument, Mr. Nason admitted that the Court's copy of the police report included an accurate copy of a signed statement bearing his signature. (See Court Ex. 1.)

Therefore, the Court concludes, in the alternative, that there is sufficient evidence for a jury to find that, on December 14, 1998, Defendant pled guilty to an assault that involved the use of physical force. See United States v. Smith, 964 F. Supp. 286, 290 (N.D. Iowa 1997) (“Because the assault committed by Defendant clearly involved the use of force, it may qualify as a ‘misdemeanor crime of domestic violence’ despite the fact that [the Iowa simple assault statute] does not require the use of force as an element.”), aff’d, 171 F.3d 617 (8th Cir. 1999).

V. CONCLUSION

For these reasons, the Court DENIES both Defendant’s Motion to Dismiss and Motion to Withdraw Guilty Plea.

SO ORDERED.

George Z. Singal
District Judge

Dated on this 13th day of February, 2001.

ROBERT NASON, JR (1) CHRISTOPHER D. SMITH, ESQ.

defendant

[term 06/15/00]

[COR LD NTC cja]

P.O. BOX 1006

BANGOR, ME 04402-1006

945-3355

JOSEPH BALDACCI, ESQ.

[COR LD NTC cja]

P.O. BOX 1423
6 STATE STREET, SUITE 403
BANGOR, ME 04402
(207) 945-3333